

Tillery, Loreto

From: Levine, Carolyn
Sent: Wednesday, June 22, 2016 5:18 PM
To: Albritton, Jason (EPW)
Subject: Re: EPA tech assistance call re: CCR

9:15 am, will send invite/conf line but haven't confirmed with Maj yet but I think BB said it would work.

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On Jun 22, 2016, at 4:43 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Before 11.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Wednesday, June 22, 2016 4:43 PM
To: Albritton, Jason (EPW)
Subject: Re: EPA tech assistance call re: CCR

ok, I don't think we are, but checking. Any good/bad times tomorrow a.m.?

Carolyn Levine
Office of Congressional Affairs
U.S. EPA
(202) 564-1859
levine.carolyn@epa.gov

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, June 22, 2016 4:34 PM
To: Levine, Carolyn
Subject: RE: EPA tech assistance call re: CCR

Free now.

-----Original Message-----
From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Wednesday, June 22, 2016 10:06 AM
To: Albritton, Jason (EPW)
Subject: Re: EPA tech assistance call re: CCR

What time(s) work for you?

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

> On Jun 22, 2016, at 9:54 AM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:
>
> I need to be on any call and will be at the signing ceremony then.
>
> Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
> Original Message
> From: Levine, Carolyn
> Sent: Wednesday, June 22, 2016 9:53 AM
> To: Albritton, Jason (EPW)
> Subject: Re: EPA tech assistance call re: CCR
>
>
> TSCA?
> If Tom is available, should we do it? Our afternoon is really tough but might be able to rearrange.
>
>
> -----
> Carolyn Levine
> U.S. EPA
> Office of Congressional Affairs
> (202) 564-1859
> levine.carolyn@epa.gov
>
>
>> On Jun 22, 2016, at 9:31 AM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:
>>
>> Does not work for me
>>
>>
>>
>> -----
>>
>> Organizer: Levine, Carolyn
>>
>> When: 11:30 AM - 12:00 PM June 22, 2016
>>
>> Subject: EPA tech assistance call re: CCR
>>
>> Location: call-in: (b) (6) , code: (b) (6) #
>

Tillery, Loreto

From: Levine, Carolyn
Sent: Wednesday, June 22, 2016 10:23 AM
To: 'Fox, Thomas (EPW)'
Subject: RE: EPA tech assistance call re: CCR

Ok.

I asked Jason what time(s) might work but I got your vm that he's already at WH. So we'll wait to hear back on a better time, today or tomorrow, thx

Carolyn Levine
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Intergovernmental Relations
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-----Original Appointment-----

From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Wednesday, June 22, 2016 9:55 AM
To: Levine, Carolyn
Subject: Declined: EPA tech assistance call re: CCR
When: Wednesday, June 22, 2016 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: call-in: (b) (6), code: (b) (6) #

Tillery, Loreto

From: Levine, Carolyn
Sent: Tuesday, June 21, 2016 10:03 AM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: Re: EPA TA: Coal Ash

Will have to be after our enforcement briefing.

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On Jun 21, 2016, at 10:02 AM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Yes, we need a call.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Tuesday, June 21, 2016 9:01 AM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: Re: EPA TA: Coal Ash

While the language in (ii) would be cleaner with just the reference to the rule, the revised language is acceptable for EPA because it retains enough with the reference to the rule as a comparison.

Our redline edits in (C) address our concerns about the state having veto power.

Let me know if you would like a call to discuss.

Carolyn Levine
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On Jun 20, 2016, at 9:04 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Ok. Let us know.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Monday, June 20, 2016 8:50 PM
To: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Cc: Fox, Thomas (EPW) <Thomas_Fox@epw.senate.gov>
Subject: Re: EPA TA: Coal Ash

That was what we conveyed and I believe it addresses those concerns. Laurel was out today but said she'd review again and confirm in the a.m.

Carolyn Levine
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On Jun 20, 2016, at 6:49 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

We had long discussions with EPA staff about concerns raised in the previous version about forcing EPA to re-litigate every aspect of the rule in each state and giving states veto power in the approval of state programs. We need to understand if this new language addresses both of those issues.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Monday, June 20, 2016 6:45 PM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: RE: EPA TA: Coal Ash

Minority should explain their thinking on the language, our redline TA is focused on ensuring that the permit terms and what is approved are consistent. The language could have been interpreted that the state could determine that its alternative permit requirements met the standard.

Carolyn Levine
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Intergovernmental Relations
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levine.carolyn@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Monday, June 20, 2016 6:38 PM

To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Cc: Fox, Thomas (EPW) <Thomas_Fox@epw.senate.gov>
Subject: RE: EPA TA: Coal Ash

Can you please share your thinking on this?

From: Levine, Carolyn [mailto:Levine.Carolyn@epa.gov]
Sent: Monday, June 20, 2016 6:34 PM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: EPA TA: Coal Ash

Below are EPA's TA comments (in redline) on the revised draft language.

“(B) REQUIREMENT.—Not later than 90 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator shall approve, in whole or in part, a program or system submitted under subparagraph (A) if the Administrator determines that the program or system requires each coal combustion residual unit in the State to achieve compliance with—

“(i) the applicable criteria for coal combustion residual units established in 40 C.F.R. Part 257 (or successor regulations); or

“(ii) such other criteria that, after consultation with the State, the Administrator determines meet the level of protection achieved by the regulations in Part 257 of Title 40, Code of Federal Regulations (or successor regulations), of no reasonable probability of adverse effects on human health and the environment from a coal combustion residual unit.

“(C) PERMIT REQUIREMENTS—EPA may approve a State permit program ~~approved~~ under clause (ii) of paragraph (B) that includes ~~may include~~ technical standards in an individual permits or conditions of approval that are different from the technical standards set forth in Part 257 of Title 40, Code of Federal Regulations (or successor regulations), provided that, based on site-specific conditions, such technical standards meet the protectiveness standard set forth in clause (ii) of paragraph (B).

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From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Monday, June 20, 2016 6:15 PM

To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Cc: Fox, Thomas (EPW) <Thomas_Fox@epw.senate.gov>
Subject: Coal Ash

Can you update us on the latest TA you have provided on coal ash? We understand there is new language that has been worked out with EPA.

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Tillery, Loreto

From: Levine, Carolyn
Sent: Wednesday, June 15, 2016 9:30 AM
To: 'Fox, Thomas (EPW)'
Cc: 'Albritton, Jason (EPW)'
Subject: RE: CCW bill TA request
Attachments: EPA Technical Assistance- Draft CCR legislation 6-15-2016.pdf

Hi Tom and Jason,

Attached and copied below is EPA's Technical Assistance on your questions. We can do a call now until 10:30 and then after 12:30 (I will need to confirm times). Let me know your availability. Thanks.

These EPA staff-level Technical Assistance comments are being provided for use solely by SEPW Committee staff. The comments should not be construed in any way as representing the policy positions of the Agency or the Administration on legislative language.

**EPA TECHNICAL ASSISTANCE ON
DRAFT "COAL COMBUSTION RESIDUALS REGULATORY IMPROVEMENT ACT"
JUNE 15, 2016**

General Comments

The draft legislation includes only the procedures in CERCLA 128(b), but not all of the exceptions and limitations, and so in effect it is far more restrictive of EPA's authority than CERCLA 128(b). Specifically:

- CERCLA 128(b) is limited to "low priority" sites -- eg., those that aren't on the NPL/don't present as significant a risk profile. The draft legislation is not similarly limited but applies to all enforcement actions, no matter how significant.
- CERCLA 128(b) includes other "overrides" and "exceptions" in subsection (b)(1)(B) such that EPA has a fair degree of flexibility to overfile, if necessary. The draft legislation does not include any similar provisions.

Specific Comments

1. **Sec. 2, (d)(2)(C)(ii)(I) and(II):** The language appears to ensure that EPA is either invited by the state to take action or has considered any state action and determined additional federal action is still necessary. The language does not prevent EPA enforcement actions. The language places conditions on EPA's authority to take an enforcement action to those circumstances where the state has made a request, which and adds an additional requirement not currently in RCRA. Under certain conditions, the provision allows EPA to take action in situations where the state has not made a request.
2. **Sec. 2, (d)(2)(C)(ii)(II):** The requirement that the Administrator take into account other administrative or judicial enforcement actions prior to determining whether action is warranted is not overly burdensome. In practice,

other actions will be considered and the need for federal action will be evaluated in the context of outstanding actions regarding the same unit or units. Given that the Administrator need only taken into account prior actions, it is not clear that state action would prevent federal action.

3. **Sec. 2, (d)(2)(C)(ii)(II):** It is not clear how the language “likely to be necessary to ensure the coal combustion residual unit is operating in accordance with the criteria” will be interpreted, but it clearly could limit the Agency’s ability to use its enforcement authority. In practice, it is not clear if the Agency would have to make a prerequisite showing or establish a reviewable record to establish this standard was met prior to the Agency taking action. If so, in addition to diverting resources, this could delay enforcement action that may be necessary.
4. **Sec. 2, (d)(2)(C)(iii)(I):** Regarding the draft bill text below, Section 3008 already contains a state notification provision and the addition of another one is redundant and unnecessary.
 - a. *(iii)(I) notification to State not less than 48 hrs. - Section 3008(a)(2) already requires EPA to give notice to the approved State prior to issuing an order or bringing a civil action*
5. **Sec. 2, (d)(2)(C)(iii)(II):** First, it is not clear that the reporting requirement would be limited to overfiling scenarios as the language states it is triggered by “enforcement actions.” Second, a report to Congress after every action, overfiling or otherwise, is unnecessary and would be very burdensome, and EPA would only be able to disclose information regarding enforcement activity once a case had been publicly filed. Third, to the extent the language is read to be limited to overfiling scenarios, it is not clear under what circumstances this requirement would be triggered as the term ‘overfiling’ has been used in many different situations, far beyond the situation where both state and federal agencies have pursued formal action.

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From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Thursday, June 09, 2016 1:56 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: CCW bill TA request

Carolyn: attached is the majority’s latest draft CCW bill.

Of particular concern are:

1. (d)(1)(B)(ii), “such other criteria as the Administrator determines in consultation with the State will ensure that no reasonable probability of adverse effects on health or the environment will result from the coal combustion residual units.”
 - This is inconsistent with the principle that federal rules set the minimum standard and that state criteria must be at least “equivalent” to (or more stringent than) the EPA CCR rule.
2. (d)(2)(D), putting restrictions on EPA enforcement under section 3008 in approved states
 - Concern is that these restrictions are designed to prevent EPA from ever taking enforcement in an approved state, unless the state agrees.
 - (ii)(I) state requests – while this appears consistent with EPA policy, be should it be in the statute?
 - (ii)(II) taking into account state enforcement – does this mean that a State can block EPA enforcement through a consent order?

- (ii)(II) Administrator determines EPA action is “likely to be necessary to ensure the coal combustion residual unit is operating in accordance with the criteria” – what does this standard mean? Is it likely to be interpreted to block EPA from taking enforcement action, especially in combination with the first clause requiring EPA to “take into consideration” State enforcement?
- (iii)(I) notification to State not less than 48 hrs. - Section 3008(a)(2) already requires EPA to give notice to the approved State prior to issuing an order or bringing a civil action
- (iii)(II) report to Congress within 30 days after overfilling enforcement action - seems intended to discourage EPA from ever overfilling; why not a report after X years on EPA enforcement under the Act, including, but not limited to overfilling in approved states?

Tillery, Loreto

From: Levine, Carolyn
Sent: Tuesday, June 14, 2016 3:27 PM
To: 'Fox, Thomas (EPW)'
Subject: RE: status of TA

I can but it will take longer to compile.

Carolyn Levine
Office of Congressional and Intergovernmental Relations
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levine.carolyn@epa.gov

From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Tuesday, June 14, 2016 3:26 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: RE: status of TA

I thought you were going to provide written TA?

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Tuesday, June 14, 2016 3:20 PM
To: Fox, Thomas (EPW)
Subject: RE: status of TA

Will you be able to have a quick call at 3:45 or is that too difficult during hearing?

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levine.carolyn@epa.gov

From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Tuesday, June 14, 2016 2:40 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: RE: status of TA

I'll be in my office, watching the hearing.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Tuesday, June 14, 2016 2:37 PM
To: Fox, Thomas (EPW)
Subject: status of TA

Tom,

I'm reviewing a draft now, waiting for supervisor review.

Are you covering the 3pm SC hearing today or will you be available in case we need a call?

Carolyn Levine

Office of Congressional and Intergovernmental Relations

U.S. EPA

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Tillery, Loreto

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Tillery, Loreto

From: Levine, Carolyn
Sent: Monday, June 13, 2016 11:17 AM
To: 'Fox, Thomas (EPW)'
Subject: RE: CCW bill TA request

Unfortunately we are only available until 1pm today (I checked and folks are available until).

Carolyn Levine
Office of Congressional and Intergovernmental Relations
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levine.carolyn@epa.gov

From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Monday, June 13, 2016 11:15 AM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: Re: CCW bill TA request

I'm tied up in a meeting, not sure what time will be. Done. Can we do this later today?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Levine, Carolyn
Sent: Monday, June 13, 2016 10:46 AM
To: Fox, Thomas (EPW)
Subject: RE: CCW bill TA request

Hi Tom,

I'm not sure—ORCR's calendars are blocked with a 12pm meeting. I sent an email to folks but haven't heard back yet.

Carolyn Levine
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From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Monday, June 13, 2016 10:39 AM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: Re: CCW bill TA request

Can we do this at 11:45?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Levine, Carolyn
Sent: Monday, June 13, 2016 10:02 AM
To: Fox, Thomas (EPW)
Subject: RE: CCW bill TA request

Hi Tom,

We are available at 11:15 for a TA call if that works for you (and Jason?). Let me know...

Carolyn Levine
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From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Thursday, June 09, 2016 1:56 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: CCW bill TA request

Carolyn: attached is the majority's latest draft CCW bill.

Of particular concern are:

1. (d)(1)(B)(ii), "such other criteria as the Administrator determines in consultation with the State will ensure that no reasonable probability of adverse effects on health or the environment will result from the coal combustion residual units."
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Tillery, Loreto

From: Levine, Carolyn
Sent: Monday, June 13, 2016 10:51 AM
To: 'Fox, Thomas (EPW)'
Subject: RE: CCW bill TA request

Yes, that's better. Once you're sure, let me know.

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From: Fox, Thomas (EPW) [mailto:Thomas_Fox@epw.senate.gov]
Sent: Monday, June 13, 2016 10:50 AM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: Re: CCW bill TA request

I might be able to do 11:30, if that works

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Levine, Carolyn
Sent: Monday, June 13, 2016 10:46 AM
To: Fox, Thomas (EPW)
Subject: RE: CCW bill TA request

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Subject: Re: CCW bill TA request

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Tillery, Loreto

From: Levine, Carolyn
Sent: Monday, June 13, 2016 10:47 AM
To: 'Fox, Thomas (EPW)'
Subject: RE: CCW bill TA request

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Subject: Re: CCW bill TA request

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Tillery, Loreto

From: Levine, Carolyn
Sent: Thursday, July 14, 2016 3:06 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole
Subject: Re: Updated Version

Will do

Carolyn Levine
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(202) 564-1859
levine.carolyn@epa.gov

On Jul 14, 2016, at 3:00 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Carolyn,

Attached is an updated version from leg counsel based on the call we just had. Also attached is a redline showing the differences between this version and the previous version. Can you send this around to folks for one additional look?

Jason

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

<MCC16539.pdf>

<Redline MCC16532 & MCC16539.rtf>

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 2446

To amend the Solid Waste Disposal Act to authorize permitting programs for the proper management and disposal of coal combustion residuals and to encourage resource conservation and recovery and beneficial use of coal combustion residuals.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mrs. CAPITO (for herself, Mr.
INHOFE, Mr. HOEVEN, Mr. MANCHIN, and Mr. BLUNT)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coal Combustion Re-
5 siduals Regulatory Improvement Act of 2016”.

6 **SEC. 2. APPROVAL OF STATE PROGRAMS FOR CONTROL OF**
7 **COAL COMBUSTION RESIDUALS.**

8 Section 4005 of the Solid Waste Disposal Act (42
9 U.S.C. 6945) is amended by adding at the end the fol-
10 lowing:

1 “(d) STATE PROGRAMS FOR CONTROL OF COAL
2 COMBUSTION RESIDUALS.—

3 “(1) APPROVAL BY ADMINISTRATOR.—

4 “(A) IN GENERAL.—Each State may sub-
5 mit to the Administrator, in such form as the
6 Administrator may establish, evidence of a per-
7 mit program or other system of prior approval
8 and conditions under State law for regulation
9 by the State of coal combustion residual units
10 that are located in the State in lieu of a Fed-
11 eral program under this subsection.

12 “(B) REQUIREMENT.—Not later than 90
13 days after the date on which a State submits
14 the evidence described in subparagraph (A), the
15 Administrator shall approve, in whole or in
16 part, a permit program or other system of prior
17 approval and conditions submitted under sub-
18 paragraph (A) if the Administrator determines
19 that the program or other system requires each
20 coal combustion residual unit located in the
21 State to achieve compliance with—

22 “(i) the applicable criteria for coal
23 combustion residual units under part 257
24 of title 40, Code of Federal Regulations (or

1 successor regulations), promulgated pursu-
2 ant to sections 1008(a)(3) and 4004(a); or

3 “(ii) such other State criteria that the
4 Administrator, after consultation with the
5 State, determines to be at least as protec-
6 tive as the criteria described in clause (i).

7 “(C) PERMIT REQUIREMENTS.—The Ad-
8 ministrator may approve under subparagraph
9 (B)(ii) a State permit program or other system
10 of prior approval and conditions that allows a
11 State to include technical standards for indi-
12 vidual permits or conditions of approval that
13 differ from the technical standards under part
14 257 of title 40, Code of Federal Regulations (or
15 successor regulations), if, based on site-specific
16 conditions, the technical standards established
17 pursuant to an approved State program or
18 other system are at least as protective as the
19 technical standards under that part.

20 “(D) WITHDRAWAL OF APPROVAL.—

21 “(i) PROGRAM REVIEW.—The Admin-
22 istrator shall review programs or other sys-
23 tems approved under subparagraph (B)—

1 “(I) from time to time, but not
2 less frequently than once every 5
3 years; or

4 “(II) on request of a State.

5 “(ii) NOTIFICATION AND OPPOR-
6 TUNITY FOR A PUBLIC HEARING.—The Ad-
7 ministrator shall provide to the relevant
8 State notice and an opportunity for a pub-
9 lic hearing if the Administrator determines
10 that—

11 “(I) a revision or correction to
12 the permit program or other system of
13 prior approval and conditions of the
14 State is required for the State to
15 achieve compliance with the require-
16 ments of subparagraph (B);

17 “(II) the State has not adopted
18 and implemented an adequate permit
19 program or other system of prior ap-
20 proval and conditions for each coal
21 combustion residual unit located in
22 the State to ensure compliance with
23 the requirements of subparagraph
24 (B); or

1 “(III) the State has, at any time,
2 approved or failed to revoke a permit
3 under this subsection that would lead
4 to the violation of a law to protect
5 human health or the environment of
6 any other State.

7 “(iii) WITHDRAWAL.—

8 “(I) IN GENERAL.—The Admin-
9 istrator shall withdraw approval of a
10 State permit program or other system
11 of prior approval and conditions if,
12 after the Administrator provides no-
13 tice and an opportunity for a public
14 hearing to the relevant State under
15 clause (ii), the Administrator deter-
16 mines that the State has not corrected
17 the deficiency.

18 “(II) REINSTATEMENT OF STATE
19 APPROVAL.—Any withdrawal of ap-
20 proval under subclause (I) shall cease
21 to be effective on the date on which
22 the Administrator makes a determina-
23 tion that the State permit program or
24 other system of prior approval and

1 conditions complies with the require-
2 ments of subparagraph (B).

3 “(2) NONPARTICIPATING STATES.—

4 “(A) DEFINITION OF NONPARTICIPATING
5 STATE.—In this paragraph, the term ‘non-
6 participating State’ means a State—

7 “(i) for which the Administrator has
8 not approved a State permit program or
9 other system of prior approval and condi-
10 tions under paragraph (1)(B);

11 “(ii) the Governor of which has not
12 submitted to the Administrator for ap-
13 proval evidence to operate a State permit
14 program or other system of prior approval
15 and conditions under paragraph (1)(A);

16 “(iii) the Governor of which has pro-
17 vided notice to the Administrator that, not
18 fewer than 90 days after the date on which
19 the Governor provides notice to the Admin-
20 istrator, the State relinquishes an approval
21 under paragraph (1)(B) to operate a per-
22 mit program or other system of prior ap-
23 proval and conditions; or

24 “(iv) for which the Administrator has
25 withdrawn approval for a permit program

1 or other system of prior approval and con-
2 ditions under paragraph (1)(D)(iii).

3 “(B) PERMIT PROGRAM.—In the case of a
4 nonparticipating State for which the Adminis-
5 trator makes a determination that the non-
6 participating State lacks the capacity to imple-
7 ment a permit program or other system of prior
8 approval and conditions and subject to the
9 availability of appropriations, the Administrator
10 may implement a permit program to require
11 each coal combustion residual unit located in
12 the nonparticipating State to achieve compli-
13 ance with applicable criteria established by the
14 Administrator under part 257 of title 40, Code
15 of Federal Regulations (or successor regula-
16 tions).

17 “(3) APPLICABILITY OF CRITERIA.—The appli-
18 cable criteria for coal combustion residual units
19 under part 257 of title 40, Code of Federal Regula-
20 tions (or successor regulations), promulgated pursu-
21 ant to sections 1008(a)(3) and 4004(a), shall apply
22 to each coal combustion residual unit in a State un-
23 less—

24 “(A) a permit under a State permit pro-
25 gram or other system of prior approval and

1 conditions approved by the Administrator under
2 paragraph (1)(B) is in effect; or

3 “(B) a permit issued by the Administrator
4 in a State in which the Administrator is imple-
5 menting a permit program under paragraph
6 (2)(B) is in effect.

7 “(4) PROHIBITION ON OPEN DUMPING.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B)(i) and subject to subpara-
10 graph (B)(ii), the Administrator may use the
11 authority provided by sections 3007 and 3008
12 to enforce the prohibition against open dumping
13 contained in subsection (a) with respect to a
14 coal combustion residual unit.

15 “(B) FEDERAL ENFORCEMENT IN AP-
16 PROVED STATE.—

17 “(i) IN GENERAL.—In the case of a
18 coal combustion residual unit located in a
19 State that is approved to operate a permit
20 program or other system of prior approval
21 and conditions under paragraph (1)(B),
22 the Administrator may commence an ad-
23 ministrative or judicial enforcement action
24 under section 3008 if—

1 “(I) the State requests that the
2 Administrator provide assistance in
3 the performance of the enforcement
4 action; or

5 “(II) after consideration of any
6 other administrative or judicial en-
7 forcement action involving the coal
8 combustion residual unit, the Admin-
9 istrator determines that an enforce-
10 ment action is likely to be necessary
11 to ensure that the coal combustion re-
12 sidual unit is operating in accordance
13 with the criteria established under the
14 permit program or other system of
15 prior approval and conditions.

16 “(ii) NOTIFICATION.—In the case of
17 an enforcement action by the Adminis-
18 trator under clause (i)(II), before issuing
19 an order or commencing a civil action, the
20 Administrator shall notify the State in
21 which the coal combustion residual unit is
22 located.

23 “(iii) ANNUAL REPORT TO CON-
24 GRESS.—Not later than December 31,
25 2017, and December 31 of each year

1 thereafter, the Administrator shall submit
2 to the Committee on Environment and
3 Public Works of the Senate and the Com-
4 mittee on Energy and Commerce of the
5 House of Representatives a report that de-
6 scribes any enforcement action commenced
7 under clause (i)(II), including a description
8 of the basis for the enforcement action.

9 “(5) INDIAN COUNTRY.—The Administrator
10 may establish and carry out a permit program, in
11 accordance with this subsection, for coal combustion
12 residual units in Indian country (as defined in sec-
13 tion 1151 of title 18, United States Code) to require
14 each coal combustion residual unit located in Indian
15 country to achieve compliance with the applicable
16 criteria established by the Administrator under part
17 257 of title 40, Code of Federal Regulations (or suc-
18 cessor regulations).

19 “(6) TREATMENT OF COAL COMBUSTION RESID-
20 UAL UNITS.—A coal combustion residual unit shall
21 be considered to be a sanitary landfill for purposes
22 of subsection (a) only if the coal combustion residual
23 unit is operating in accordance with—

1 “(A) the requirements established pursu-
2 ant to a program for which an approval is pro-
3 vided by—

4 “(i) the State in accordance with a
5 program or system approved under para-
6 graph (1)(B); or

7 “(ii) the Administrator pursuant to
8 paragraph (2)(B) or paragraph (5); or

9 “(B) the applicable criteria for coal com-
10 bustion residual units under part 257 of title
11 40, Code of Federal Regulations (or successor
12 regulations), promulgated pursuant to sections
13 1008(a)(3) and 4004(a).

14 “(7) EFFECT OF SUBSECTION.—Nothing in this
15 subsection affects any authority, regulatory deter-
16 mination, other law, or legal obligation in effect on
17 the day before the date of enactment of the Coal
18 Combustion Residuals Regulatory Improvement Act
19 of 2016.”.

Purpose: In the nature of a substitute.

S. 2446

To amend the Solid Waste Disposal Act to authorize permitting programs for the proper management and disposal of coal combustion residuals and to encourage resource conservation and recovery and beneficial use of coal combustion residuals.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY **MRS. CAPITO (for herself, Mr. INHOFE (for himself, Mr. HOEVEN, Mr. MANCHIN, Mrs. Capito, and Mr. BLUNT)**

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coal Combustion Residuals Regulatory Improvement Act of 2016”.

SEC. 2. APPROVAL OF STATE PROGRAMS FOR CONTROL OF COAL COMBUSTION RESIDUALS.

Section 4005 of the Solid Waste Disposal Act (42 U.S.C. 6945) is amended by adding at the end the following:

“(d) State Programs for Control of Coal Combustion Residuals.—

“(1) APPROVAL BY ADMINISTRATOR.—

“(A) IN GENERAL.—Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residual units that are located in the State in lieu of a Federal program under this

subsection.

“(B) REQUIREMENT.—Not later than 90 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system requires each coal combustion residual unit located in the State to achieve compliance with—

“(i) the applicable criteria for coal combustion residual units under part 257 of title 40, Code of Federal Regulations (or successor regulations), promulgated pursuant to sections 1008(a)(3) and 4004(a); or

“(ii) such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the criteria described in clause (i).

“(C) PERMIT REQUIREMENTS.—The Administrator may approve under subparagraph (B)(ii) a State permit program or other system of prior approval and conditions that allows a State to include technical standards for individual permits or conditions of approval that differ from the technical standards under part 257 of title 40, Code of Federal Regulations (or successor regulations), if, based on site-specific conditions, the technical standards established pursuant to an approved State program or other system are at least as protective as the technical standards under that part.

“(D) WITHDRAWAL OF APPROVAL.—

“(i) PROGRAM REVIEW.—The Administrator shall review programs or other systems approved under subparagraph (B) ~~from time to time.~~(B)—

**“(I) from time to time, but not less frequently than once every 5 years;
or**

“(II) on request of a State.

“(ii) NOTIFICATION AND OPPORTUNITY FOR A PUBLIC HEARING.—The Administrator shall provide to the relevant State notice and an opportunity for a public hearing if the Administrator determines that—

“(I) a revision or correction to the permit program or other system of prior approval and conditions of the State is required for the State to achieve compliance with the requirements of subparagraph (B); ~~or~~

“(II) the State has not adopted and implemented an adequate permit program or other system of prior approval and conditions for each coal combustion residual unit located in the State to ensure compliance with the requirements of subparagraph (B); **or**

“(III) the State has, at any time, approved or failed to revoke a permit under this subsection that would lead to the violation of a law to protect human health or the environment of any other State.-

“(iii) WITHDRAWAL.—

“(I) IN GENERAL.—The Administrator shall withdraw approval of a State permit program or other system of prior approval and conditions if, after the Administrator provides notice and an opportunity for a public hearing to the relevant State under clause (ii), the Administrator determines that the State has not corrected the deficiency.

“(II) REINSTATEMENT OF STATE APPROVAL.—Any withdrawal of approval under subclause (I) shall cease to be effective on the date on which the Administrator makes a determination that the State permit program or other system of prior approval and conditions complies with the requirements of subparagraph (B).

“(2) NONPARTICIPATING STATES.—

“(A) DEFINITION OF NONPARTICIPATING STATE.—In this paragraph, the term ‘nonparticipating State’ means a State—

“(i) for which the Administrator has not approved a State permit program or other system of prior approval and conditions under paragraph (1)(B);

“(ii) the Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under paragraph (1)(A);

“(iii) the Governor of which has provided notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides notice to the Administrator, the State relinquishes an approval under paragraph (1)(B) to operate a permit program or other system of prior approval and conditions; or

“(iv) for which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under paragraph (1)(D)(iii).

“(B) PERMIT PROGRAM.—In the case of a nonparticipating State for which the Administrator makes a determination that the nonparticipating State lacks the capacity to implement a permit program or other system of prior approval and conditions and subject to the availability of appropriations, the Administrator may implement a permit program to require each coal combustion residual unit located in the nonparticipating State to achieve compliance with applicable criteria established by the Administrator **under part 257 of title 40, Code of Federal Regulations (or successor regulations).**

“(3) APPLICABILITY OF CRITERIA.—The applicable criteria for coal combustion residual units under part 257 of title 40, Code of Federal Regulations (or successor regulations), promulgated pursuant to sections 1008(a)(3) and 4004(a), shall apply to each coal combustion residual unit in a State unless—

“(A) a permit under a State permit program or other system of prior approval and conditions approved by the Administrator under paragraph (1)(B) is in effect; or

“(B) a permit issued by the Administrator in a State in which the Administrator is implementing a permit program under paragraph (2)(B) is in effect.

“(4) PROHIBITION ON OPEN DUMPING.—

1 “(A) IN GENERAL.—Except as provided in subparagraph (B)(i) and subject to
2 subparagraph (B)(ii), the Administrator may use the authority provided by sections
3 3007 and 3008 to enforce the prohibition against open dumping contained in
4 subsection (a) with respect to a coal combustion residual unit.

5 “(B) FEDERAL ENFORCEMENT IN APPROVED STATE.—

6 “(i) IN GENERAL.—In the case of a coal combustion residual unit located in a
7 State that is approved to operate a permit program or other system of prior
8 approval and conditions under paragraph (1)(B), the Administrator may
9 commence an administrative or judicial enforcement action under section 3008
10 if—

11 “(I) the State requests that the Administrator provide assistance in the
12 performance of the enforcement action; or

13 “(II) after consideration of any other administrative or judicial
14 enforcement action involving the coal combustion residual unit, the
15 Administrator determines that an enforcement action is likely to be necessary
16 to ensure that the coal combustion residual unit is operating in accordance
17 with the criteria established under the permit program or other system of
18 prior approval and conditions.

19 “(ii) NOTIFICATION.—In the case of an enforcement action by the Administrator
20 under clause (i)(II), before issuing an order or commencing a civil action, the
21 Administrator shall notify the State in which the coal combustion residual unit is
22 located.

23 “(iii) ANNUAL REPORT TO CONGRESS.—Not later than December 31, 2017, and
24 December 31 of each year thereafter, the Administrator shall submit to the
25 Committee on Environment and Public Works of the Senate and the Committee
26 on Energy and Commerce of the House of Representatives a report that describes
27 any enforcement action commenced under clause (i)(II), including a description
28 of the basis for the enforcement action.

29 “(5) INDIAN COUNTRY.—The Administrator may establish and carry out a permit
30 program, in accordance with this subsection, for coal combustion residual units in Indian
31 country (as defined in section 1151 of title 18, United States Code) **to require each coal**
32 **combustion residual unit located in Indian country to achieve compliance with the**
33 **applicable criteria established by the Administrator under part 257 of title 40, Code of**
34 **Federal Regulations (or successor regulations).**

35 “(6) TREATMENT OF COAL COMBUSTION RESIDUAL UNITS.—A coal combustion residual
36 unit shall be considered to be a sanitary landfill for purposes of subsection (a) only if the
37 coal combustion residual unit is operating in accordance with—

38 “(A) the requirements established pursuant to a program for which an approval is
39 provided by—

40 “(i) the State in accordance with a program or system approved under
41 paragraph (1)(B); or

42 “(ii) the Administrator pursuant to paragraph (2)(B) or paragraph (5); or

1 “(B) the applicable criteria for coal combustion residual units under part 257 of title
2 40, Code of Federal Regulations (or successor regulations), promulgated pursuant to
3 sections 1008(a)(3) and 4004(a).

4 “(7) EFFECT OF SUBSECTION.—Nothing in this subsection affects any authority ~~or~~,
5 regulatory determination, **other law, or legal obligation** in effect on the day before the date
6 of enactment of the Coal Combustion Residuals Regulatory Improvement Act of 2016.”.

Tillery, Loreto

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, July 14, 2016 1:49 PM
To: Levine, Carolyn
Subject: RE: Coal Ash TA
Attachments: MCC16532_XML-071416-EPW Edits-v3.doc

From: Levine, Carolyn [mailto:Levine.Carolyn@epa.gov]
Sent: Thursday, July 14, 2016 1:46 PM
To: Albritton, Jason (EPW)
Subject: RE: Coal Ash TA

Sorry, give us 5 more mins

Carolyn Levine
Office of Congressional and
Intergovernmental Relations
U.S. EPA
(202) 564-1859
levine.carolyn@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Thursday, July 14, 2016 1:24 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: RE: Coal Ash TA

Just received a slightly modified version. Can you circulate to the staff that will be on the call?

From: Levine, Carolyn [mailto:Levine.Carolyn@epa.gov]
Sent: Thursday, July 14, 2016 1:21 PM
To: Albritton, Jason (EPW)
Subject: Re: Coal Ash TA

Actually can you do 1:40? Should I call you directly or do you want to conference line?

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On Jul 14, 2016, at 1:15 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Yep. Let's do 1:30. Thanks.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Thursday, July 14, 2016 1:15 PM
To: Albritton, Jason (EPW)
Subject: RE: Coal Ash TA

Yes, after 1:30pm. Are you free in the 1:30-2 window?

Carolyn Levine
Office of Congressional and
Intergovernmental Relations
U.S. EPA
(202) 564-1859
[*levine.carolyn@epa.gov*](mailto:levine.carolyn@epa.gov)

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Thursday, July 14, 2016 1:00 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Cc: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: RE: Coal Ash TA

Carolyn,

Can we set up a call to discuss?

Jason

From: Distefano, Nichole [<mailto:DiStefano.Nichole@epa.gov>]
Sent: Thursday, July 14, 2016 12:51 PM
To: Albritton, Jason (EPW)
Cc: Levine, Carolyn
Subject: Re: Coal Ash TA

Jason

I am looping Carolyn since I am going to be in meetings for the next several hours.

Sent from my iPhone

On Jul 14, 2016, at 12:38 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Can we get TA on these changes? This includes the changes discussed yesterday as well as some new changes.

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Purpose: In the nature of a substitute.

S. 2446

To amend the Solid Waste Disposal Act to authorize permitting programs for the proper management and disposal of coal combustion residuals and to encourage resource conservation and recovery and beneficial use of coal combustion residuals.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY MR. INHOFE (for himself, Mr. HOEVEN, Mr. MANCHIN, Mrs. CAPITO, and Mr. BLUNT)

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coal Combustion Residuals Regulatory Improvement Act of 2016”.

SEC. 2. APPROVAL OF STATE PROGRAMS FOR CONTROL OF COAL COMBUSTION RESIDUALS.

Section 4005 of the Solid Waste Disposal Act (42 U.S.C. 6945) is amended by adding at the end the following:

“(d) State Programs for Control of Coal Combustion Residuals.—

“(1) APPROVAL BY ADMINISTRATOR.—

“(A) IN GENERAL.—Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residual units that are located in the State in lieu of a Federal program under this subsection.

1 “(B) REQUIREMENT.—Not later than 90 days after the date on which a State submits
2 the evidence described in subparagraph (A), the Administrator shall approve, in whole
3 or in part, a permit program or other system of prior approval and conditions submitted
4 under subparagraph (A) if the Administrator determines that the program or other
5 system requires each coal combustion residual unit located in the State to achieve
6 compliance with—

7 “(i) the applicable criteria for coal combustion residual units under part 257 of
8 title 40, Code of Federal Regulations (or successor regulations), promulgated
9 pursuant to sections 1008(a)(3) and 4004(a); or

10 “(ii) such other State criteria that the Administrator, after consultation with the
11 State, determines to be at least as protective as the criteria described in clause (i).

12 “(C) PERMIT REQUIREMENTS.—The Administrator may approve under subparagraph
13 (B)(ii) a State permit program or other system of prior approval and conditions that
14 allows a State to include technical standards for individual permits or conditions of
15 approval that differ from the technical standards under part 257 of title 40, Code of
16 Federal Regulations (or successor regulations), if, based on site-specific conditions, the
17 technical standards established pursuant to an approved State program or other system
18 are at least as protective as the technical standards under that part.

19 “(D) WITHDRAWAL OF APPROVAL.—

20 “(i) PROGRAM REVIEW.—The Administrator shall review programs or other
21 systems approved under subparagraph (B) from time to time, but no less
22 frequently than every five years or upon the request of a State.

23 “(ii) NOTIFICATION AND OPPORTUNITY FOR A PUBLIC HEARING.—The
24 Administrator shall provide to the relevant State notice and an opportunity for a
25 public hearing if the Administrator determines that—

26 “(I) a revision or correction to the permit program or other system of prior
27 approval and conditions of the State is required for the State to achieve
28 compliance with the requirements of subparagraph (B); or

29 “(II) the State has not adopted and implemented an adequate permit
30 program or other system of prior approval and conditions for each coal
31 combustion residual unit located in the State to ensure compliance with the
32 requirements of subparagraph (B); or

33 “(III) the State, at any time, has approved or failed to revoke a permit that
34 would lead to the violation of a law to protect human health or the
35 environment of any other State.

36 “(iii) WITHDRAWAL.—

37 “(I) IN GENERAL.—The Administrator shall withdraw approval of a State
38 permit program or other system of prior approval and conditions if, after the
39 Administrator provides notice and an opportunity for a public hearing to the
40 relevant State under clause (ii), the Administrator determines that the State
41 has not corrected the deficiency.

“(II) REINSTATEMENT OF STATE APPROVAL.—Any withdrawal of approval under subclause (I) shall cease to be effective on the date on which the Administrator makes a determination that the State permit program or other system of prior approval and conditions complies with the requirements of subparagraph (B).

“(2) NONPARTICIPATING STATES.—

“(A) DEFINITION OF NONPARTICIPATING STATE.—In this paragraph, the term ‘nonparticipating State’ means a State—

“(i) for which the Administrator has not approved a State permit program or other system of prior approval and conditions under paragraph (1)(B);

“(ii) the Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under paragraph (1)(A);

“(iii) the Governor of which has provided notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides notice to the Administrator, the State relinquishes an approval under paragraph (1)(B) to operate a permit program or other system of prior approval and conditions; or

“(iv) for which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under paragraph (1)(D)(iii).

“(B) PERMIT PROGRAM.—In the case of a nonparticipating State for which the Administrator makes a determination that the nonparticipating State lacks the capacity to implement a permit program or other system of prior approval and conditions and subject to the availability of appropriations, the Administrator may implement a permit program to require each coal combustion residual unit located in the nonparticipating State to achieve compliance with applicable criteria established by the Administrator under part 257 of title 40, Code of Federal regulations (or successor regulations).

“(3) APPLICABILITY OF CRITERIA.—The applicable criteria for coal combustion residual units under part 257 of title 40, Code of Federal Regulations (or successor regulations), promulgated pursuant to sections 1008(a)(3) and 4004(a), shall apply to each coal combustion residual unit in a State unless—

“(A) a permit under a State permit program or other system of prior approval and conditions approved by the Administrator under paragraph (1)(B) is in effect; or

“(B) a permit issued by the Administrator in a State in which the Administrator is implementing a permit program under paragraph (2)(B) is in effect.

“(4) PROHIBITION ON OPEN DUMPING.—

“(A) IN GENERAL.—Except as provided in subparagraph (B)(i) and subject to subparagraph (B)(ii), the Administrator may use the authority provided by sections 3007 and 3008 to enforce the prohibition against open dumping contained in subsection (a) with respect to a coal combustion residual unit.

“(B) FEDERAL ENFORCEMENT IN APPROVED STATE.—

1 “(i) IN GENERAL.—In the case of a coal combustion residual unit located in a
2 State that is approved to operate a permit program or other system of prior
3 approval and conditions under paragraph (1)(B), the Administrator may
4 commence an administrative or judicial enforcement action under section 3008
5 if—

6 “(I) the State requests that the Administrator provide assistance in the
7 performance of the enforcement action; or

8 “(II) after consideration of any other administrative or judicial
9 enforcement action involving the coal combustion residual unit, the
10 Administrator determines that an enforcement action is likely to be necessary
11 to ensure that the coal combustion residual unit is operating in accordance
12 with the criteria established under the permit program or other system of
13 prior approval and conditions.

14 “(ii) NOTIFICATION.—In the case of an enforcement action by the Administrator
15 under clause (i)(II), before issuing an order or commencing a civil action, the
16 Administrator shall notify the State in which the coal combustion residual unit is
17 located.

18 “(iii) ANNUAL REPORT TO CONGRESS.—Not later than December 31, 2017, and
19 December 31 of each year thereafter, the Administrator shall submit to the
20 Committee on Environment and Public Works of the Senate and the Committee
21 on Energy and Commerce of the House of Representatives a report that describes
22 any enforcement action commenced under clause (i)(II), including a description
23 of the basis for the enforcement action.

24 “(5) INDIAN COUNTRY.—The Administrator may establish and carry out a permit
25 program, in accordance with this subsection, for coal combustion residual units in Indian
26 country (as defined in section 1151 of title 18, United States Code) to require each coal
27 combustion residual unit located in Indian Country to achieve compliance with the
28 applicable criteria established by the Administrator under part 257 of title 40, Code of
29 Federal Regulations (or successor regulations).

30 “(6) TREATMENT OF COAL COMBUSTION RESIDUAL UNITS.—A coal combustion residual
31 unit shall be considered to be a sanitary landfill for purposes of subsection (a) only if the
32 coal combustion residual unit is operating in accordance with—

33 “(A) the requirements established pursuant to a program for which an approval is
34 provided by—

35 “(i) the State in accordance with a program or system approved under
36 paragraph (1)(B); or

37 “(ii) the Administrator pursuant to paragraph (2)(B) or paragraph (5); or

38 “(B) the applicable criteria for coal combustion residual units under part 257 of title
39 40, Code of Federal Regulations (or successor regulations), promulgated pursuant to
40 sections 1008(a)(3) and 4004(a).

41 “(7) EFFECT OF SUBSECTION.—Nothing in this subsection affects any other laws, legal
42 obligations, authority or regulatory determinations in effect on the day before the date of

1 enactment of the Coal Combustion Residuals Regulatory Improvement Act of 2016.”.

Tillery, Loreto

From: Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>
Sent: Monday, July 11, 2016 2:51 PM
To: Levine, Carolyn
Attachments: MCC16527.pdf

Ryan Jackson
Chief of Staff
U.S. Senator James M. Inhofe
205 Russell Senate Office Building
202-224-4721
202-228-1007 facsimile

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 2446

To amend the Solid Waste Disposal Act to authorize permitting programs for the proper management and disposal of coal combustion residuals and to encourage resource conservation and recovery and beneficial use of coal combustion residuals.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coal Combustion Re-
5 siduals Regulatory Improvement Act of 2016”.

6 **SEC. 2. APPROVAL OF STATE PROGRAMS FOR CONTROL OF**
7 **COAL COMBUSTION RESIDUALS.**

8 Section 4005 of the Solid Waste Disposal Act (42
9 U.S.C. 6945) is amended by adding at the end the fol-
10 lowing:

1 “(d) STATE PROGRAMS FOR CONTROL OF COAL
2 COMBUSTION RESIDUALS.—

3 “(1) APPROVAL BY ADMINISTRATOR.—

4 “(A) IN GENERAL.—Each State may sub-
5 mit to the Administrator, in such form as the
6 Administrator may establish, evidence of a per-
7 mit program or other system of prior approval
8 and conditions under State law for regulation
9 by the State of coal combustion residual units
10 that are located in the State in lieu of a Fed-
11 eral program under this subsection.

12 “(B) REQUIREMENT.—Not later than 90
13 days after the date on which a State submits
14 the evidence described in subparagraph (A), the
15 Administrator shall approve, in whole or in
16 part, a permit program or other system of prior
17 approval and conditions submitted under sub-
18 paragraph (A) if the Administrator determines
19 that the program or other system requires each
20 coal combustion residual unit located in the
21 State to achieve compliance with—

22 “(i) the applicable criteria for coal
23 combustion residual units under part 257
24 of title 40, Code of Federal Regulations (or

1 successor regulations), promulgated pursu-
2 ant to sections 1008(a)(3) and 4004(a); or

3 “(ii) such other State criteria that the
4 Administrator, after consultation with the
5 State, determines to be at least as protec-
6 tive as the criteria described in clause (i).

7 “(C) PERMIT REQUIREMENTS.—The Ad-
8 ministrator may approve under subparagraph
9 (B)(ii) a State permit program or other system
10 of prior approval and conditions that allows a
11 State to include technical standards for indi-
12 vidual permits or conditions of approval that
13 differ from the technical standards under part
14 257 of title 40, Code of Federal Regulations (or
15 successor regulations), if, based on site-specific
16 conditions, the technical standards established
17 pursuant to an approved State program or
18 other system are at least as protective as the
19 technical standards under that part.

20 “(D) WITHDRAWAL OF APPROVAL.—

21 “(i) PROGRAM REVIEW.—The Admin-
22 istrator shall review programs or other sys-
23 tems approved under subparagraph (B)
24 from time to time.

1 “(ii) NOTIFICATION AND OPPOR-
2 TUNITY FOR A PUBLIC HEARING.—The Ad-
3 ministrator shall provide to the relevant
4 State notice and an opportunity for a pub-
5 lic hearing if the Administrator determines
6 that—

7 “(I) a revision or correction to
8 the permit program or other system of
9 prior approval and conditions of the
10 State is required for the State to
11 achieve compliance with the require-
12 ments of subparagraph (B); or

13 “(II) the State has not adopted
14 and implemented an adequate permit
15 program or other system of prior ap-
16 proval and conditions for each coal
17 combustion residual unit located in
18 the State to ensure compliance with
19 the requirements of subparagraph
20 (B).

21 “(iii) WITHDRAWAL.—

22 “(I) IN GENERAL.—The Admin-
23 istrator shall withdraw approval of a
24 State permit program or other system
25 of prior approval and conditions if,

1 after the Administrator provides no-
2 tice and an opportunity for a public
3 hearing to the relevant State under
4 clause (ii), the Administrator deter-
5 mines that the State has not corrected
6 the deficiency.

7 “(II) REINSTATEMENT OF STATE
8 APPROVAL.—Any withdrawal of ap-
9 proval under subclause (I) shall cease
10 to be effective on the date on which
11 the Administrator makes a determina-
12 tion that the State permit program or
13 other system of prior approval and
14 conditions complies with the require-
15 ments of subparagraph (B).

16 “(2) NONPARTICIPATING STATES.—

17 “(A) DEFINITION OF NONPARTICIPATING
18 STATE.—In this paragraph, the term ‘non-
19 participating State’ means a State—

20 “(i) for which the Administrator has
21 not approved a State permit program or
22 other system of prior approval and condi-
23 tions under paragraph (1)(B);

24 “(ii) the Governor of which has not
25 submitted to the Administrator for ap-

1 proval evidence to operate a State permit
2 program or other system of prior approval
3 and conditions under paragraph (1)(A);

4 “(iii) the Governor of which has pro-
5 vided notice to the Administrator that, not
6 fewer than 90 days after the date on which
7 the Governor provides notice to the Admin-
8 istrator, the State relinquishes an approval
9 under paragraph (1)(B) to operate a per-
10 mit program or other system of prior ap-
11 proval and conditions; or

12 “(iv) for which the Administrator has
13 withdrawn approval for a permit program
14 or other system of prior approval and con-
15 ditions under paragraph (1)(D)(iii).

16 “(B) PERMIT PROGRAM.—In the case of a
17 nonparticipating State for which the Adminis-
18 trator makes a determination under paragraph
19 (1)(B) that the nonparticipating State lacks the
20 capacity to implement a permit program or
21 other system of prior approval and conditions
22 and subject to the availability of appropriations,
23 the Administrator may implement a permit pro-
24 gram to require each coal combustion residual
25 unit located in the nonparticipating State to

1 achieve compliance with applicable criteria es-
2 tablished by the Administrator.

3 “(3) APPLICABILITY OF CRITERIA.—The appli-
4 cable criteria for coal combustion residual units
5 under part 257 of title 40, Code of Federal Regula-
6 tions (or successor regulations), promulgated pursu-
7 ant to sections 1008(a)(3) and 4004(a), shall apply
8 to each coal combustion residual unit in a State un-
9 less—

10 “(A) a State permit program or other sys-
11 tem of prior approval and conditions approved
12 by the Administrator under paragraph (1)(B) is
13 in effect in the State; or

14 “(B) the Administrator is implementing a
15 permit program in the State under paragraph
16 (2)(B).

17 “(4) PROHIBITION ON OPEN DUMPING.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B)(i) and subject to subpara-
20 graph (B)(ii), the Administrator may use the
21 authority provided by sections 3007 and 3008
22 to enforce the prohibition against open dumping
23 contained in subsection (a) with respect to a
24 coal combustion residual unit.

1 “(B) FEDERAL ENFORCEMENT IN AP-
2 PROVED STATE.—

3 “(i) IN GENERAL.—In the case of a
4 coal combustion residual unit located in a
5 State that is approved to operate a permit
6 program or other system of prior approval
7 and conditions under paragraph (1)(B),
8 the Administrator may commence an ad-
9 ministrative or judicial enforcement action
10 under section 3008 if—

11 “(I) the State requests that the
12 Administrator provide assistance in
13 the performance of the enforcement
14 action; or

15 “(II) after consideration of any
16 other administrative or judicial en-
17 forcement action involving the coal
18 combustion residual unit, the Admin-
19 istrator determines that an enforce-
20 ment action is likely to be necessary
21 to ensure that the coal combustion re-
22 sidual unit is operating in accordance
23 with the criteria established under the
24 permit program or other system of
25 prior approval and conditions.

1 “(ii) NOTIFICATION.—In the case of
2 an enforcement action by the Adminis-
3 trator under clause (i)(II), before issuing
4 an order or commencing a civil action, the
5 Administrator shall notify the State in
6 which the coal combustion residual unit is
7 located.

8 “(iii) ANNUAL REPORT TO CON-
9 GRESS.—Not later than December 31,
10 2017, and December 31 of each year
11 thereafter, the Administrator shall submit
12 to the Committee on Environment and
13 Public Works of the Senate and the Com-
14 mittee on Energy and Commerce of the
15 House of Representatives a report that de-
16 scribes any enforcement action commenced
17 under clause (i)(II), including a description
18 of the basis for the enforcement action.

19 “(5) INDIAN COUNTRY.—The Administrator
20 may establish and carry out a permit program, in
21 accordance with this subsection, for coal combustion
22 residual disposal units in Indian country (as defined
23 in section 1151 of title 18, United States Code).

24 “(6) TREATMENT OF COAL COMBUSTION RESID-
25 UAL DISPOSAL UNITS.—A coal combustion residual

1 disposal unit shall be considered to be a sanitary
2 landfill for purposes of subsection (a) only if the coal
3 combustion residual unit is operating in accordance
4 with—

5 “(A) the requirements established pursu-
6 ant to a program for which an approval is pro-
7 vided by—

8 “(i) the State in accordance with a
9 program or system approved under para-
10 graph (1)(B); or

11 “(ii) the Administrator pursuant to
12 paragraph (2)(B) or paragraph (5); or

13 “(B) the applicable criteria for coal com-
14 bustion residual units under part 257 of title
15 40, Code of Federal Regulations (or successor
16 regulations), promulgated pursuant to sections
17 1008(a)(3) and 4004(a).

18 “(7) EFFECT OF SUBSECTION.—Nothing in this
19 subsection affects any authority or regulatory deter-
20 mination in effect on the day before the date of en-
21 actment of the Coal Combustion Residuals Regu-
22 latory Improvement Act of 2016.”.

Tillery, Loreto

From: Levine, Carolyn
Sent: Friday, May 13, 2016 2:04 PM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: Re: TA CRR Bill

Tom and Jason,

I will have some more comments, unfortunately I've been having computer issues. I'm trying to resolve, but if there is still time and you want me to talk you through our comments, give me a call on my desk phone.

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On May 13, 2016, at 12:26 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Carolyn,

This should reflect the TA you provided. We just want to make sure it correctly captures everything.

Jason

From: Fox, Thomas (EPW)
Sent: Friday, May 13, 2016 12:25 PM
To: Carolyn J. Levine (levine.carolyn@epa.gov)
Cc: Albritton, Jason (EPW)
Subject: TA CRR Bill

Carolyn: for technical assistance, revised redline. Any issues?

Thanks.

Tom

Tillery, Loreto

From: Levine, Carolyn
Sent: Friday, May 13, 2016 12:36 PM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: Re: TA CRR Bill

Got it, thanks. I saw a attachment clip on my email but it wasn't anything.

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On May 13, 2016, at 12:35 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

I didn't send anything. I just responded to Tom's email.

From: Levine, Carolyn [<mailto:Levine.Carolyn@epa.gov>]
Sent: Friday, May 13, 2016 12:35 PM
To: Albritton, Jason (EPW)
Cc: Fox, Thomas (EPW)
Subject: Re: TA CRR Bill

Ok, will do. I'm not at computer right now, is what you each sent the same thing?

Carolyn Levine
U.S. EPA
Office of Congressional Affairs
(202) 564-1859
levine.carolyn@epa.gov

On May 13, 2016, at 12:26 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

Carolyn,

This should reflect the TA you provided. We just want to make sure it correctly captures everything.

Jason

From: Fox, Thomas (EPW)
Sent: Friday, May 13, 2016 12:25 PM

To: Carolyn J. Levine (levine.carolyn@epa.gov)

Cc: Albritton, Jason (EPW)

Subject: TA CRR Bill

Carolyn: for technical assistance, revised redline. Any issues?

Thanks.

Tom